

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

JEREMY HERNANDEZ)	
MANRIQUEZ by his Next Friend)	
And Mother GUADALUPE)	
MANRIQUEZ, GUADALUPE)	
MANRIQUEZ Individually and)	
GERARDO HERNANDEZ RIVERA,)	
)	
Plaintiff,)	Civil No. 15-4018
)	
v.)	
)	NOTICE OF REMOVAL
ROBERT ROY GRANT, M.D. and)	
MICHAEL ANDREW DEHNER, M.D.,))	
)	
Defendants.)	

The United States of America, by its attorney, Matthew J. Cole, Assistant United States Attorney for the Northern District of Iowa, pursuant to Federal Rule of Civil Procedure 81(c), Local Rule 81.a, and 42 U.S.C. § 233(c), respectfully states the following in support of its Notice of Removal as to all claims alleged against defendants Robert Roy Grant, M.D. and Michael Andrew Dehner, M.D.:

1. Plaintiffs commenced a state court civil action alleging, among other things, that defendants Robert Roy Grant, M.D. and Michael Andrew Dehner, M.D. failed to provide proper medical care to Jeremy Hernandez Manriquez.
2. The suit is a civil action in the District Court for Buena Vista County, Iowa, case number LACV029319. Copies of all process, pleadings, and orders served upon the defendant or in the court file, are attached as Exhibit A.

3. This Notice of Removal is brought pursuant to 28 U.S.C. §§ 1441, 1442(a)(1), 1446, 28 U.S.C. §§ 2671 and 2674, and 42 U.S.C. § 233(c). Plaintiff's Complaint alleges, in part, a tort action against Robert Roy Grant, M.D. and Michael Andrew Dehner, M.D. in that it is alleged that they provided negligent medical treatment and care to Jeremy Hernandez Manriquez. At all times alleged in the Complaint, United Community Health Center was a facility deemed a federal supported health center subject to Federal Tort Claim Act (FTCA) coverage. The Secretary of Health and Human Services deemed United Community Health Center eligible for FTCA coverage for all relevant time periods pursuant to the Federally Support Health Centers Assistance Act (42 U.S.C. § 233(g)-(n)) (FSHCAA). Dr. Michael Andrew Dehner, an employee of United Community Health Center, was acting within the scope of his federal employment at all times relevant to the Complaint. The U.S. Attorney has certified that Dr. Dehner was acting within the scope of his federal employment. As an employee of United Community Health Center, Dr. Michael Andrew Dehner is deemed a federal employee for FTCA coverage. 42 U.S.C. § 233(g). Consequently, the allegations against Dr. Dehner are subject to FSHCAA and the exclusive remedy provided by the FTCA. Dr. Michael Andrew Dehner has federal defenses pursuant to the FTCA.

4. Payment of a settlement or judgment against the United States as a result of any omission or action of a deemed federally supported health center and/or its employees is subject to the availability of funds since such payment is not paid from the Judgment Fund.

5. This Notice of Removal is timely filed in that the United States Attorney's Office was provided a copy of the Complaint on March 3, 2015. The proper defendant is the United States of America pursuant to the FTCA.

6. A copy of this notice is being filed with the Clerk of the Buena Vista County District Court. That filing will automatically effect the removal of the action in its entirety to this Court for all future proceedings. See 28 U.S.C. § 1446(d).

7. A report to the Court containing all of the information required by Local Rule 81.a is attached to this notice as Exhibit B.

8. A copy of this notice has been mailed to all adverse parties.

WHEREFORE, defendant, the United States of America, requests that the above-captioned action, now pending in the District Court for Buena Vista County, Iowa, case number LACV029319, be removed to this Court and that no further proceedings take place in state court.

Respectfully submitted,

KEVIN W. TECHAU
United States Attorney

By: /s/ *Matthew J. Cole*

CERTIFICATE OF SERVICE

I hereby certify that on 3/12/2015,
I mailed a copy of the foregoing to the
following attorneys of record:

Frederick W. James
The James Law Firm, P.C.
2600 Grand Ave, Suite 213
Des Moines, IA 50312

Joseph L. Fitzgibbons
Fitzgibbons Law Firm, L.L.C.
P.O. Box 496
Estherville, IA 51334

MATTHEW J. COLE
Assistant United States Attorney
111 7th Avenue SE, Box 1
Cedar Rapids, IA 52401-2101
Tel: (319) 363-6333
Fax: (319) 363-1990
Matt.Cole@usdoj.gov

UNITED STATES ATTORNEY
By: /s/ Ashley Ness